EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 18 1996

FCC MAIL ROOM

Tuesday, September 17, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Mr. Caton,

Please add the enclosed information to Docket Number 96-45 under the Telecommunications Act of 1996. This additional information was requested by the Federal-State Joint Board on Universal Service during an Ex Parte presentation provided by the Foundations for the Future Consortium on September 6, 1996. If you have any questions concerning this information please give me a call at (404) 240-2930, ext. 3002 or email: cevans@astinc.com.

I have also enclosed a full copy of our Ex Parte presentation to the Federal-State Joint Board on Universal Service as an attachment.

Sincerely,.

Christopher A. Evans

3520 Piedmont Road, NW., Suite 300, Atlanta , Georgia 30305

No. of Copies rec'd 1 copy
List ABCDE

KING & SPALDING

191 PEACHTREE STREET
ATLANTA, GEORGIA 30303-1763
TELEPHONE: 404/572-4600
FACSIMILE: 404/572-5100

DIRECT DIAL:
404/572-4684

DIRECT FAX:
404/572-5145

MEMORANDUM

TO: **Georgia Tech Research Institute**
Morris Brown Research Institute
Christopher Evans, Industry Liaison Representative

FROM: **Timothy F. Coen**

DATE: **September 17, 1996**

RE: **Does the Federal Communications Commission have Authority under Section 254 of the Telecommunications Act of 1996 to Establish and Fund a Program of State Level Consortia Formed for the Purpose of Ensuring Universal K-12 Access to Telecommunication Technologies ?**

The Georgia Tech Research Institute, the Morris Brown Research Institute and Christopher Evans, Industry Liaison Representative, operating as a consortium called the "Foundations for the Future" (collectively, the "Foundations Consortium") made an ex-parte presentation on September 6th, 1996 to the Federal-State Joint Board (the "Joint Board") established under Section 254 of the Telecommunications Act of 1996 (the "Telecom Act"). During this presentation, the Foundations Consortium proposed the establishment of a consortium of higher education, industry and government in each state which would provide technical information, assistance and training to schools and libraries in order to ensure universal K-12 access to telecommunication technologies in such state. The Foundations Consortium also proposed that the FCC include in its pending universal service rules a mechanism to fund the establishment of such consortia in each state, starting with a pilot program in Georgia.

In response, the Joint Board requested, among other things, that the Foundations Consortium provide legal arguments to support the use of Section 254 of the Telecom Act to justify the funding of the proposed plan. You requested that we look into this question of the FCC's regulatory authority under Section 254 and provide you with the necessary legal arguments for a response to the Joint Board supporting the proposition that the FCC has authority to establish rules which will facilitate the funding and development of such state level consortia. Set forth below are our conclusions and analysis.

DISCUSSION

The FCC has broad authority under Section 254 of the Telecom Act to establish "specific, predictable and sufficient support mechanisms to preserve and enhance universal service." In particular, the FCC is specifically authorized under Section 254 (c) (3) to "designate additional services for such support mechanisms for schools, libraries and health care providers for purposes of [Section 254] (h)." Notably, the reference to "services" in Section 254 (c) (3) is not limited by its terms to telecommunications services, and, indeed, Section 254 (c) (3) expressly states that such special services are *in addition to* the services included in the definition of universal service (which does specifically refer to the defined term "telecommunications services").

In the Joint Explanatory Statement of the Joint Committee of Conference (the "Joint Committee Report"), at H1113, the scope of the authority provided to the FCC under Section 254 (c) is also described quite broadly as follows:

> "Pursuant to new subsection [254] (c)(3), the Commission is authorized to designate a separate definition of universal service applicable only to public institutional telecommunications users. In so doing, the conferees expect the Commission and the Joint Board to take into account the particular needs of hospitals, K-12 schools and libraries." (emphasis added).

Certainly, as the Foundations Consortium pointed out in its proposal, one of the particular needs of schools, health care providers and libraries (in contrast to other users who may be eligible for some form of universal service support) is access to coordinated network planning, technology information and technical assistance and training in order to enhance their ability to access the new telecommunications services and technologies that may now be made available to them. In addition to limited funds for the purchase of telecommunications service, schools, rural health care providers and libraries also have limited access to funds to engage the kind of technical assistance they need to effectively access these new services. The Foundations Consortium's proposal addresses the specific and "particular need of hospitals, K-12 schools and libraries" as emphasized in the Joint Committee Report.

In addition, under Section 254 (h) (2), the Commission is required, among other things, to do the following:

> "... [to] establish competitively neutral rules--
>
> > (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries;"

Arguably, by establishing competitively neutral rules that will encourage the establishment of sophisticated and centralized state-level consortia of the type proposed by the Foundations Consortium to the Joint Board, the FCC would go a long way towards meeting the statutory requirement shown above to enhance access to advanced telecommunications and information services for schools, health care providers and libraries. Coupled with the provisions of Section 254 (c) (3) above, the statutory authorization under Section 254 (h) (2) appears to give the FCC broad latitude to establish mechanisms to enhance access to advanced telecommunications services by schools, health care providers and libraries. Once again, this conclusion is reinforced by the language of the Joint Committee Report. In that report at H1113, the conferees stated that:

> "New subsection [254] (h)(2) requires the Commission to establish rules to enhance the availability of advanced telecommunications services and information services to public institutional telecommunications users. For example, the Commission could determine that telecommunications and information services for classrooms and libraries shall include dedicated data links and the ability to obtain access to ... research information, ... [and] reports developed by Federal, State and local governments...."

Based on the foregoing, we believe that the statutory language of Section 254 reasonably supports the interpretation that the FCC has authority to establish rules which will facilitate the funding and development of state level consortia to provide technical information, assistance and training to schools, libraries and rural health care providers as proposed by the Foundations Consortium.

Based on our conclusion above, we also believe that any decision by the FCC to adopt the Foundations Consortium's proposal should withstand judicial scrutiny under the principles established by the U.S. Supreme Court in Chevron v. Natural Resources Defense Council 467 US 837 (1984). Under *Chevron*, a reviewing court must defer to the interpretations of the relevant federal agency if the statutory language in question which supports the action taken is reasonably subject to more than one interpretation. Given that the language of Section 254 seems broad enough to support the interpretation that the FCC has authority to take the proposed action, we believe that any decision by the FCC to do so should pass the standard of review set forth in *Chevron* and be upheld in the event of any subsequent challenge to such decision.

Ex Parte Presentation

to the

Federal-State Joint Board on Universal Service

"Foundations for the Future" :
A Partnership Concept for Ensuring Universal K-12 Access to Telecommunication Technologies

Presented by:

Georgia Tech Research Institute, Morris Brown Research Institute
and
Christopher Evans, Industry Liaison Representative

September 6, 1996

Submitted to:

The Federal Communications Commission Office of the Secretary
William F. Caton
1919 M Street, NW
Washington, DC 20554

Ex Parte presentation "Foundations for the Future" : A Partnership Concept for Ensuring Universal K-12 Access to Telecommunication Technologies presented to the Federal-State Joint Board on Universal Service on September 6, 1996

Georgia Tech Research Institute Representatives, Claudia Huff and Jeff Evans, Morris Brown Research Institute Representative, Roosevelt Thomas and Industry Liaison Representative, Christopher Evans submit the following information to the FCC's Office of the Secretary under Docket number 96-45.

The Information contained in attachment-1, was provided to the Federal-State Joint Board Universal Service in an Ex Parte presentation in the 8th floor conference room at 2100 M Street, NW., Washington, DC, at 2:00 p.m. September 6, 1996.

The FCC participants represented in attachment-2, were provided presentation material addressing the following two principles of Section 254 of the Telecommunications Act of 1996 which call for:

1) rural and urban elementary and secondary schools, libraries, and health care providers to have access to advanced telecommunication services, and

2) regular inquires be conducted to see that advanced telecommunications are in fact becoming accessible.

Proposal Summary:

We propose establishing a pilot program in the State of Georgia comprised of higher education providing unbiased technology information in the following three key functions referred to as "Foundations for the Future":

1) Brokering technology information
2) Providing technical assistance (including funding awareness)
3) Providing targeted training

These services are proposed for both rural and urban decision makers at the local level to ensure quality purchasing decisions.

This approach leverages existing resources in a partnership model for ensuring universal K-12 access to telecommunication technologies. Following the pilot phase, we propose assisting in the replication of the program throughout the nation on a state-by-state basis, while monitoring and reporting information accumulated on the program to the FCC Federal-State Joint Board on Universal Service, as well as to state and local education decision makers.

During the September 6, 1996 Ex Parte presentation "Foundations for the Future": A Partnership Concept for Ensuring Universal K-12 Access to Telecommunication Technologies, the following request for additional information was made by the Federal-State Joint Board on Universal Service:

1) provide legal arguments for using Section 254 of the Telecommunication Act of 1996 to justify funding of your proposed plan, and

2) provide a projection of potential savings associated with implementation of your proposal.

Information is requested to be added to Docket 96-45 within ten (10) working days of the September 6 Ex Parte date.

Attachment -1

Ex Parte Presentation to Federal-State Joint Board on Universal Service

Presented By:

Claudia Huff, Georgia Tech Research Institute

Jeff Evans, Georgia Tech Research Institute

Roosevelt Thomas, Morris Brown Research Institute

Christopher Evans, Industry Representative

September 06,1996

Foundations For The Future

A Partnership Concept for Ensuring Universal K-12 Access to Telecommunications Technologies

Presented by: Georgia Tech Research Institute &
Morris Brown Research Institute with State &
Industry Support

Issues to Address

- Telecommunications Act of 1996 Requires:
  - That rural and urban K-12 schools, libraries, etc., should have access to advanced technologies
  - That regular inquiries are conducted to see that advanced technologies are in fact becoming accessible

Our Model: Why Us?

- Extensive state investment in infrastructure and facilities such as:
  - State supported Georgia Center for Advanced Telecommunications Technology
  - Specialized programs with diverse funding base
  - Existing state/community telecom networks
- Strong business orientation combined with relevant expertise and experience
- Builds on existing collaborative efforts among principals

Our Recommendation:

- Leveraging investments and expertise in higher education to support K-12 through
  - brokering technology information
  - providing technical assistance
  - providing targeted training
- Achieve this by establishing a consortium of higher education, industry, and government at the state level

Brokering Technology Information

- Information clearinghouse function
- Decision-making tools/consultation
- Conduit to specialized resources
  - network of service providers
  - multiple focused programs

Technical Assistance

- Needs assessments
- Technology assessments
- Implementation issues
  - compatibility
  - expandability
  - maintainability

Training

- Administrators
- Teachers
- Parents/community

Results / Benefits

- Provide unbiased resource to users
- Informed decision-making at local level
- Enhanced learning / teaching
- Synergistic impact of limited investments
- Alignment of industry focus with user needs
- Solidify partnership of education, government and industry communities
- Equitable access achieved earlier

Conclusions

- Best approach is to promote partnerships of
  - technology expertise
  - learning / teaching expertise
  - industry know-how
- Ensure equitable / timely access and use
  - common standard avoids proprietary solutions
  - optimize resources within financial constraints
- Evaluate, refine and replicate model

ATTACHMENT - 2

List of Federal-State Joint Board on Universal Service Ex Parte participants which were provided presentation information on the "Foundations for the Future": A Partnership Concept for Ensuring Universal K-12 Access to Telecommunication Technologies, on September 6, 1996.

1) Irene Flannery
Federal Communications Commission

2) Debra Kriete
Pennsylvania Public Utilities Commission

3) Mark Long
Florida Public Service Commission

4) Sam Loudenslager
Arkansas Public Service Commission

5) Terry Monroe
New York Public Service Commission

6) Mark Nadel
Federal Communication Commission

7) Lee Palagyi
Washington Utilities and Transportation Commission

8) Paul Pederson
State Staff Chair
Missouri Public Service Commission

INTRODUCTION

The Georgia Tech Research Institute (GTRI), Morris Brown Research Institute (MBRI) and industry liaison Christopher Evans, are pleased to submit this concept for consideration by the Federal-State Joint Board on Universal Service. Our concept addresses principles in Section 254 of the Telecommunication Act of 1996 which call for:

1) rural and urban elementary and secondary schools, libraries, and health care providers to have access to advanced telecommunuication services, and
2) regular inquires be conducted to see that advanced telecommunications are in fact becoming accessible.

We propose establishing a pilot program in the State of Georgia comprised of higher education technical assistance providers tasked with assisting K-12 decision-makers in wisely spending their limited technology dollars. This approach leverages existing resources in a partnership model for ensuring universal K-12 access to telecommunications technologies. Following the pilot phase, we will assist in replicating the program throughout the nation on a state-by-state basis and monitor and report information accumulated on the program to the Federal-State Joint Board on Universal Service.

WHO WE ARE

GTRI is affiliated with the Georgia Institute of Technology, a state supported institution, while MBRI is affiliated with Morris Brown College, an historically black college. Both are located in Atlanta, Georgia and function as non-profit, contract-funded entities which provide research, training, and technical assistance services to industry and governmental sources. Christopher Evans will work in partnership with GTRI and MBRI in an industry liasion capacity coordinating industry involement in the consulting process, including accumulating statewide information on available industry funding and equipment opportunities for K-12. We all share a strong business orientation combined with relevant expertise and experience.

To implement our concept, we will build on existing collaborative efforts and an extensive state investment in infrastructure and facilities. For example, the Georgia Center for Advanced Telecommunications Technology is a state initiative for advancing telecommunication research in Georgia respresenting a research investment of over $50 milion in the last 3 years, and the $26 million physical facility in Atlanta includes 200,000 square feet of dedicated space with collabrative industry support and guidance. Further, numerous specialized programs exist in Georgia, representing a diverse funding base and talent pool, which complement this effort, such as the Center for Rehabilitation Technology and the Center for Education Integrating Science, Mathematics, and Computing, among others. And Georgia's physical infrastructure is also impressive: state networks include Peachnet (T1 lines and Switched-56, now upgrading to fiber), XNet (an experimental ATM link), and GSAMS (the Georgia Statewide Academic and Medical System), among others.

By leveraging on-going relationships between higher education research institutes like Georgia Tech's (known for technology application and transfer expertise) and Morris Brown's (known for outreach and training) - and their respective relationships with industry, government, and education communities - we can fully realize the promise of investment in telecommunication technologies for K-12, libraries, and health care providers. While Georgia has an advanced networking infrastructure, many areas of the state remain severly underserved. Our model approach will provide a method for extending existing and emerging infrastructure to such areas, while providing a model that will benefit other states.

FOUNDATIONS FOR THE FUTURE:

Our concept proposes a partnership of higher education, supported by government and industry, to ensure informed decision-making at the local level. Specifically, we propose three key functions as "Foundations for the Future:"

1) Brokering technology information
2) Providing technical assistance
3) Providing targeted training

Each is more fully described below.

Brokering Technology Information

Informed purchasing decisions at the local level require an unbiased resource that can serve an information clearinghouse function for decision-makers. This function includes finding, filtering, and focusing information about multiple technologies for specific audiences. Decision-making tools and consultation services would be made available on an as-needed basis. This function would also serve as a conduit to specialized resources such as the existing network of service providers and the various specialized programs resident on both campuses with industry research support.

Providing Technical Assistance

Technical assistance will be aimed at assisting schools and libraries in the process of defining and achieving their goals for technology-supported learning. This function would include conducting needs assessments and technology assesments, as well as providing a mechanism for addressing complicated implementation issues such as compatibility, expandability, and maintainability. We would assist decision-makers to cost-effectively answer such questions as: What equipment do I need? Where can I find it? How do I make the most of available options while building on existing capabilities? What evaluative criteria are appropriate for my particular situation? Addressing such questions in the early stages would serve to balance technology insertion efforts with teaching/learning enhancements. Emphasis on the comparative applicability/limitations of technologies in particular settings will ensure that purchasing decisions are syngeristic with respect to the impact of limited investments. Further, the technical assistance function can assist local decision-makers with identifying and securing funding from available sources charged with promoting technology applications in schools and libraries.

Providing Targeted Training

This function builds on the considerable experience of higher education in using technology to teach challenging content in a variety of disciplines. Tools and techniques developed by higher education are generally readily transferrable to the K-12 environment, and this function would provide a mechanism for sharing this expertise. Specialized courses would be developed and made available to administrators, teachers, and parents/community members. Wherever possible, the emerging information infrastructure itself would serve as a delivery mechanism for such courses, supplemented by traditional methods of instructor-led courses provided on a regional basis throughout the state.

EXPECTED RESULTS AND BENEFITS

By providing an unbiased technology information resource to both rural and urban decision-makers at the local level, we can ensure quality purchasing decisions. By assisting K-12 administrators and teachers to become better informed consumers and users, we can stimulate effective deployment of appropriate technologies. By facilitating effective technology investments, we can promote industry responsiveness to educational needs, thereby accelerating the deployment of advanced telecommunications technologies through healthy market competition. By establishing a common standard, we can avoid problems associated with proprietary solutions and align industry's focus with user needs. And finally, by establishing a state source for assisting K-12 to meet their telecommunication needs, we can also provide the FCC with timely and relevant information on how advanced technologies are being applied in the various communities.

CONCLUSION

GTRI and MBRI jointy recommend that the FCC follow the approach of promoting partnerships of higher education's technology expertise with learning/teaching expertise, supplemented by industry know-how and government support, to optimize resources within financial constraints. By employing our concept of "Foundations for the Future" we can solidy the partnership of education, government, and industry to ensure equitable access and use of telecommunications technologies through informed purchasing decisions at the local level.

GEORGIA TECH RESEARCH INSTITUTE REPRESENTATIVES:

Claudia H. Huff
404/894-3941(voice)
404/894-2184 (fax)
email: claudia.huff@gtri.gatech.edu

Jeff W. Evans
404/894-8245 (voice)
404/894-3906 (fax)
email: jeff.evans@gtri.gatech.edu

MORRIS BROWN RESEARCH INSTITUTE REPRESENTATIVES:

Roservelt Thomas
404/240-0124

Tiffany Bussey
404/220-0124

INDUSTRY LIASION REPRESENTATIVE:

Christopher A. Evans
404/240-2930 (voice)
404/240-2931 (fax)
email: cevans@astinc.com